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SEP 02 2008

In re Application of :  
Miller et al. : LETTER REGARDING  
Application No. 10/600,132 : PATENT TERM ADJUSTMENT  
Filed: June 19, 2003 :  
Atty Docket No. 24852-501 CIP :

This letter is in response to the "COMMUNICATION," filed August 1, 2008. Pursuant to applicants' duty of good faith and candor to the Office, applicants request that the determination of patent term adjustment under 35 U.S.C. 154(b) be reviewed for accuracy.

The request for review of the initial Determination of Patent Term Adjustment is GRANTED to the extent indicated.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the notice of allowance is **six hundred four (604) days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On December 12, 2007, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment was five hundred thirteen (513) days. On January 22, 2008, applicants submitted an "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)," which was granted-in-part by the decision of July 9, 2008. The decision indicated that the correct patent term adjustment at the time of the

mailing of the notice of allowance was six hundred seven (607) days. A copy of the updated PAIR screen, showing the corrected determination accompanied the decision. On August 1, 2008, applicants submitted the instant comment.

Applicants request that the Office recalculate the period of patent term adjustment. Specifically, applicants direct the Office's attention to the supplemental reply in the form of a Supplemental Information Disclosure Statement (IDS) received by the USPTO on July 19, 2007.<sup>1</sup>

A review of the application history confirms that applicants should have been assessed an additional delay of three (3) days pursuant to 37 CFR 1.704(c)(8). It is undisputed that after filing a response on July 16, 2007, applicants filed a Supplemental IDS on July 19, 2007. The record does not support a conclusion that the examiner expressly requested the Supplemental IDS. Further, a review of the Supplemental IDS, filed July 19, 2007, reveals that applicants did not include a statement under 37 CFR 1.704(d).<sup>2</sup> Thus, applicants failed to engage in reasonable efforts to conclude prosecution of the application. The period of adjustment should have been reduced by three (3) days, the number of days beginning on the day after the date the initial reply was filed, July 17, 2007, and ending on the date that the Supplemental IDS was filed, July 19, 2007. See 37 CFR 1.704(c)(8). Accordingly, an additional period of reduction of three (3) days will be entered.

In view thereof, the correct patent term adjustment at the time of the mailing of the notice of allowance is **six hundred four (604) days**.

As this letter was submitted as an advisement to the Office of an error in applicants' favor, the Office will not assess the \$200.00 fee as set forth in 37 CFR 1.18(e). The Office thanks applicants for their good faith and candor in bringing this to the attention of the Office.

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the

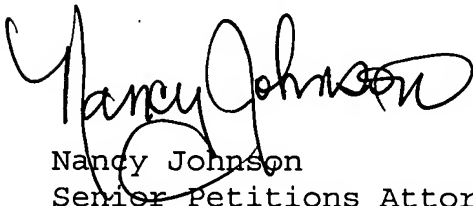
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<sup>1</sup> Applicants state that the Supplemental IDS was filed on July 18, 2007. However, the Office records indicate that the Supplemental IDS was submitted on July 19, 2007.

issuance of the patent and applicants will be notified in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this matter should be directed to Christina Tartera Donnell, Senior Petitions Attorney, at (571) 272-3211.

A handwritten signature in black ink, appearing to read "Nancy Johnson". The signature is stylized with a large, looping "N" and a cursive "Johnson".

Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions

Enclosure: Copy of updated PAIR screen

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<sup>2</sup> Pursuant to 37 CFR 1.704(d):

A paper containing only an information disclosure statement in compliance with §§ 1.97 and 1.98 will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under paragraphs (c)(6), (c)(8), (c)(9), or (c)(10) of this section if it is accompanied by a statement that each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in § 1.56(c) more than thirty days prior to the filing of the information disclosure statement. This thirty-day period is not extendable.